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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/782,817	02/23/2004	Tsuguo Nanjo	WEN-0030	5449
23353	7590	09/30/2004	EXAMINER	
RADER FISHMAN & GRAUER PLLC LION BUILDING 1233 20TH STREET N.W., SUITE 501 WASHINGTON, DC 20036			GRAY, DAVID M	
			ART UNIT	PAPER NUMBER
			2851	

DATE MAILED: 09/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/782,817	NANJO ET AL.
Examiner	Art Unit	
David M Gray	2851	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 30 August 2004.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-7 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-7 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 23 February 2004 is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date .  
4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_ .  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_

***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114.

Applicant's submission filed on 08/30/2004 has been entered.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nanjyo (US 2001/0024263) in view of Japanese publications JP-SHO 62-144635 and JP-SHO 60-57855.

Regarding claim 1, Nanjyo discloses “an illumination optical system [10-15] for illuminating the fundus with visible illumination light [13, 14] for photographing and with invisible illumination light [10-12] for observation; a photographing optical system [20-26], including a first image-pickup element [26] which has sensitivity to a visible range, for picking up an image of the fundus with visible reflection light from the fundus; an observation optical system [25, 30, 31, 32] for picking up the image of the fundus with invisible reflection light from the fundus, the observation optical system including a wavelength-selecting mirror [25] having a wavelength-selecting property of reflecting approximately all light within an invisible range and

a part of light within the visible range and transmitting a large residual part of the light within the visible range, the wavelength-selecting mirror being disposed on a first optical path of the photographing optical system, and a second image-pickup element [32] having sensitivity to the visible range and the invisible range, the second image-pickup element being disposed on a second optical path divided from the first optical path by the wavelength-selecting mirror; a fixation target projection optical system [36, 31] for fixating an eye, the fixation target projection optical system including a light-dividing member [31] disposed on the second optical path of the observation optical system, and a fixation target light source [36] for emitting visible fixation target light, the fixation target light source being disposed in an approximately conjugate position with an image-pickup surface of the second image-pickup element on a third optical path divided from the second optical path by the light-dividing member.”

Nanjyo differs from the claimed invention in that Nanjyo does not disclose “a wavelength-selecting filter having a wavelength-selection property of transmitting approximately all the light within the invisible range and a part of light within the visible range and reflecting another part of the light within the visible range, the wavelength-selecting filter being disposed on the second optical path between the wavelength-selecting mirror and the light-dividing member in an approximately conjugate position with the image-pickup surface of the second image-pickup element, wherein the visible fixation target light is guided to the eye and photo-received on the second image-pickup element.”

Japanese publications JP-SHO 62-144635 and JP-SHO 60-57855 teach providing an optical element for reflecting a portion of the fixation target light back to the observation optical system sensing element. It would have been obvious to one of ordinary skill at the time of

applicant's invention to modify Nanjyo such that lens element 30 reflects a portion of the visible light emitted from the fixation target illuminating means. One would have been motivated to so modify Nanjyo in order to provide the operator with a consistent image of the fixation target in order to improve operation of the apparatus. In modifying Nanjyo, one of ordinary skill in the art would have recognized that only a portion of the visible illumination need be reflected and would have provided an element such as element 14 in JP-SHO 62-144635 or element 19 in JP-SHO 60-57855 accordingly.

Regarding claim 2 Nanjyo discloses "the wavelength-selecting mirror reflects approximately 10% to approximately 20% of the light within the visible range [see section [0026]]."

Regarding claim 3, the claimed "wavelength-selecting filter transmits approximately half of the light within the visible range" would have been readily obtained by one of ordinary skill optimizing the modified Nanjyo.

Regarding claim 4, Nanjyo discloses "the fixation target light source [36] emits the fixation target light within a narrow visible range having a predetermined central wavelength [as 36 is a visible light source], and the wavelength-selecting filter transmits a part of the light within the narrow visible range having the predetermined central wavelength [the filter in the modified Nanjyo reflects a portion of the visible light]."

Regarding claim 5, when modifying Nanjyo one of ordinary skill in the art would have recognized the need to focus the reflected fixation illumination and provided "a reflection surface of the wavelength-selecting filter is formed to be a concave surface."

Regarding claim 6, Nanjyo discloses “the illumination optical system includes an illumination optical system for photographing which projects the visible illumination light for photographing and an illumination optical system for observation which projects the infrared illumination light for observation [see sections [0016]-[0018]].”

Regarding claim 7, Nanjyo discloses “a moving unit [37] which moves the fixation target light source [36] within a plane approximately vertical to an optical axis of the fixation target projection optical system.”

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David M Gray whose telephone number is 571-272-2119. The examiner can normally be reached on M-T 7:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy Nguyen can be reached on 571-272-2258. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David M Gray  
Primary Examiner  
Art Unit 2851